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June 22, 1995

William Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W., Suite 614  
Washington, D.C. 20554

Dear Bill:

Pursuant to our conversations, these comments are made with regard to the contents of the Federal Communications Commission's ("FCC") upcoming notice of propose rulemaking ("NPRM") for the C Block PCS auctions. Although I believe the FCC should proceed under the existing rules, if changes must be made to them, then I believe the minority and women-owned enterprises could support the changes proposed herein.

As you know, there are conflicting views on whether to maintain preferences for the minority and women-owned enterprises. The following proposals offer the FCC a compromise position to consider in crafting the upcoming NPRM:

1) All small businesses, defined as having revenues under \$40 million for the last three years, are eligible for a 25% bidding credit. Any minority or women-owned small business should be able to apply for up to an additional 10% in bidding credit, provided they can demonstrate through a specialized showing, discrimination or the inability to access adequate traditional sources of capital.

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2) Minority and women-owned businesses with revenues between \$40 and \$75 million would be able to apply for bidding credits of up to 25%., provided they can demonstrate through a specialized showing, discrimination or the inability to access adequate traditional sources of capital.

3) The showing described in sections 1) and 2) could be done as an Exhibit to the Form 175 Application, and limited to no more than four pages to minimize the administrative burden on the FCC.

Evaluations of the above waivers would be conducted by the FCC on a case by case basis.

**These Proposals Meet the Strict Scrutiny Test of *Adarand*.** The above proposals will further the compelling governmental interests of diversity of information and viewpoints as technologies converge, enhancement of competition in the telecommunications industry by diversifying FCC PCS licensees, and by furthering the provision of universal access to advanced technologies to underserved urban and rural areas.

The above proposals are also narrowly tailored to further the above compelling governmental interests. As held in previous Supreme Court cases (*Bakke*), race or gender "considerations" are constitutional, provided they are one of the factors in the criteria used to assess the merits of an individual's case, rather than only considering the group in which the person is a member. Here, race and/or gender are just one of the considerations, and past discrimination and access to capital are also equally important considerations. Thus, the foregoing proposals are narrowly tailored because they consider the unique circumstances and merits of the "individual" minority or woman-owned enterprise, rather than making a broad presumption based on their membership in a group.

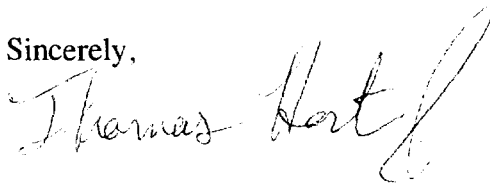
This proposal helps those most in need of financial assistance, rather than aiding the larger companies. It allows the auction to commence as scheduled on August 2, 1995. This proposal also demonstrates a compromise by the FCC that minority and women-owned enterprises can support. Adopting this proposal exemplifies the FCC's commitment to minority and women-owned enterprises for today and in the future, rather than a total retreat based on Adarand.

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Thank you for your consideration, and I await your comments.

Sincerely,



Thomas A. Hart, Jr.

On behalf of:

- 1) National Paging & Personal Communications Association;
- 2) National Institute of Communications & Education;
- 3) Communications Task Force; and
- 4) PCS Fund Members:
  - a) Atlantic Energy, Inc.
  - b) CalCell
  - c) DCR Communications, Inc.
  - d) Essence Communications, Inc.
  - e) Minco PCS
  - f) PCS 2000
  - g) Southern Communications, Inc

CC: Hon. Reed Hundt  
Hon. James Quello  
Hon. Andrew Barrett  
Hon. Susan Ness  
Hon. Rachelle Chong  
Regina Keeney, Esq.  
Anthony Williams, Esq.

mh/fccletgc